

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
RICHARD THOMAS ANHALT and) CASE NO. 05-65291 JPK
SANDRA IRENE ANHALT,) Chapter 13
)
Debtors.)

ORDER REGARDING DEFECTIVE COMBINED MOTION

On December 23, 2005, LaSalle Bank National Association, as Trustee, by counsel, filed a motion titled "Motion to Dismiss or in the Alternative for Adequate Protection Payments" ("Motion"). While it may not be readily apparent, this motion violates the requirements of N.D.Ind.L.B.R. B-9013-1(a), which requires that motions which initiate a contested matter must be limited to one form of remedy, unless the motion requests "alternative relief". Sub-paragraph (c) of that rule provides that "requests for alternative relief" means motions "which are subject to identical notice and hearing procedures". The requested relief of dismissal of the case involves the Court's provision of notice of the hearing on that motion to all creditors and parties-in-interest; the requested relief of adequate protection requires notice of a hearing only to the creditor, the debtor and the Trustee: therefore, combining a motion to dismiss with a motion for adequate protection is *verboten*.

Rather than require the creditor to file two new separate motions, the Court will deem the Motion to request dismissal of the case, and will schedule a hearing on that requested relief accordingly. However, the requested relief of adequate protection payments is denied, and if it is to be sought, it must be sought by a separate motion. In that context, if the collateral subject to the creditor's allowed secured claim is real property, the creditor is advised that the concept of "adequate protection" in the form of periodic payments relates solely to diminution in value caused by the imposition of the automatic stay; therefore, unless the creditor can show that the value of the real property is declining from the date of the petition forward, any request for adequate

protection payments will be denied in this scenario.

The Court does wish to take this opportunity to congratulate counsel for the creditor on his decision to file a motion to dismiss a case in which payments on a creditor's claim are made through the Chapter 13 Trustee, rather than to file a motion seeking relief from the stay in this context.

IT IS ORDERED that to the extent the Motion requests adequate protection payments, the Motion is denied, without prejudice to the filing of a separate motion seeking that remedy.

IT IS FURTHER ORDERED that a hearing on the motion of LaSalle National Bank Association, as Trustee, to dismiss the debtors' Chapter 13 case will be held on **February 27, 2006, at 1:00 P.M.**

Dated at Hammond, Indiana on February 2, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors, Trustee, US Trustee
All Creditors, All Parties-in-Interest